

This letter sets out the guidelines concerning different types of retailers in order to determine whether the retailer should collect Illinois Use Tax. See, 86 Ill. Adm. Code 150.201. (This is a GIL.)

March 2, 2001

Dear Xxxxx:

This letter is in response to your letter received by our office on January 9, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Thanks for taking the time to discuss the various rules and regulations regarding the subject of nexus.

To insure that we are correctly abiding by the laws of Illinois, I would greatly appreciate a ruling from your legal department regarding our status with filing income tax and sales tax returns, i.e., do we have nexus in the State of Illinois?

I summarize the relevant parameters below:

- A) COMPANY is a STATE base operation.
- B) The company employs a sales manager who is an Illinois resident.
- C) The company does not have a warehouse or principal business located in Illinois.
- D) The Illinois employee either works out of his house or travels amongst various other states.
- E) The Illinois employee does not have the authority to sign or enter into any binding legal agreements. Only the President or myself may enter into a legal agreement.
- F) The Illinois employee only sells to commercial accounts that resell to the end consumer.
- G) COMPANY plans to sell our product line over the Internet for 2001 and beyond. These sales will be direct to the end consumer.

If there is other issues which need to be addressed, please call feel free to call me.

Thank you once again and I look forward to hearing from you soon.

DEPARTMENT RESPONSE:

In the context of a General Information Letter we cannot make a binding determination on whether a business has a responsibility to collect Illinois Retailers' Occupation or Use Taxes. We will, however, provide the following general information for your consideration. Taxpayers may use the following guidelines concerning the different types of retailers in order to determine whether a business should remit and collect Illinois Retailers' Occupation Tax and Use Tax.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201 subsection (i) (see enclosed). This type of retailer is required to register with the State as an Illinois Use Tax collector (see 86 Ill. Adm. Code 150.801 enclosed). The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State.

The United States Supreme Court in *Quill Corp. v. North Dakota*, 112 S.Ct. 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. *Quill* at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative and it is immaterial for tax purposes that the representative's presence is temporary. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis, will trigger Use Tax collection responsibilities. Please see *Brown's Furniture, Inc. v. Zehnder*, 171 Ill.2d 410 (1996).

Businesses that have a representative that regularly participates in sales related activities in this State would generally be considered to have nexus with this State for sales and use tax purposes.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton  
Associate Counsel

TDC:msk  
Enc.